



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cobra Technologies, Inc.

File: B-246224

Date: February 24, 1992

Edward J. Tolchin, Esq., Fettmann & Tolchin, for the protester.
James F. Trickett and Mike Colvin, Esq., Department of Health & Human Services, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's determination that protester's proposal was technically unacceptable on the basis that the level of proposed personnel was inadequate to perform the requirements in the solicitation was reasonable where it was based on a comparison of protester's proposed staffing level with the government's estimate of the staffing level, the historical staffing level at the same facility, and actual staffing levels at other government buildings of similar size.

2. Agency satisfied the requirement for meaningful discussions when it repeatedly questioned protester whether its proposed staffing level was adequate to perform the required work load and offered the protester a reasonable opportunity to explain why its staffing was adequate and/or to revise its approach.

DECISION

Cobra Technologies, Inc. protests the award of a contract to FKW, Inc. under Department of Health & Human Services, Food and Drug Administration (FDA) request for proposals (RFP) No. 223-92-9300, issued under the Small Business Competitive Demonstration Program, for janitorial, mechanical, and operation and maintenance services at the FDA's district office/laboratory facility in Dallas, Texas. Cobra principally contends that the agency improperly evaluated its proposal.

We deny the protest.

The RFP contemplated award of a 1-year, firm, fixed-price contract with two 1-year options. The RFP required offerors to submit separate technical and cost proposals. The RFP stated that proposals would first be evaluated from a technical standpoint without regard to cost, and that those proposals considered technically acceptable would then be evaluated from a financial and management standpoint. The RFP listed four technical evaluation factors and their relative weights: (1) management practices (40 of 100 points), (2) prior experience (25 points), (3) staffing policy (25 points), and (4) certifications (10 points). With respect to the factor for staffing policy, the solicitation stated that technical proposals were to be evaluated on the basis of the number of employees proposed to accomplish the required tasks, and the degree and types of expertise; the RFP did not contain estimated or minimum staffing levels to perform the services. The RFP stated that cost proposals would not be scored, but would be evaluated on the basis of the offeror's ability to project costs which are reasonable and indicate that the offeror understands the nature and extent of the work to be performed. The RFP provided that award would be made to the lowest priced technically acceptable offeror.

Four proposals were received in response to the solicitation; three, including Cobra's and FKW's, were included in the competitive range. Cobra's lowest rated technical proposal received 82.6 points while FKW's highest rated proposal received 95.3 points. The agency determined that Cobra's proposal failed to demonstrate that the apparent number of personnel it was proposing--two part-time janitors and one on-site supervisor/mechanic--was adequate to perform the required services at the Dallas building, which has 31,000 square feet internally and 24,000 square feet externally. In this regard, Cobra's technical proposal did not list a precise number of personnel or the total labor hours of each worker, and its cost proposal did not include labor in its cost computations. The FDA nevertheless included Cobra's proposal in the competitive range in order to give the firm an opportunity to correct these ambiguities. The FDA advised Cobra during oral discussions to review the requirements in the RFP and to provide details on how the firm's proposed personnel would perform the work required by the RFP and requested the firm's best and final offer (BAFO).

In reviewing Cobra's BAFO, the FDA found that, although Cobra raised its total proposed labor hours, its proposal of only two full-time personnel--instead of the initially proposed one full-time and two part-time personnel--remained inadequate when compared to the government's estimated staffing level, historical staffing levels at the Dallas building, and staffing levels at other FDA facilities of

similar size. Thus, Cobra's BAFO, priced lower than FKW's, was found technically unacceptable, and award was made to FKW.

Cobra alleges that the FDA improperly evaluated its BAFO. Specifically, Cobra contends that the agency's determination that its BAFO was technically unacceptable on the basis that it failed to propose an adequate number of personnel was improper, because the determination was based on a de facto minimum staffing requirement--a minimum of three to five employees consisting of at least one mechanic and two janitors--in the form of the government staffing estimate, which was not set forth in the RFP.

We will examine an evaluation to assure that it was reasonable and consistent with the stated evaluation criteria, Pan Am World Servs., Inc.; Base Maintenance Support Group; Holmes & Narver Servs., Inc., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

We find that the agency did not apply an undisclosed minimum staffing requirement, and that it reasonably determined that Cobra's proposal was unacceptable. Contrary to Cobra's assertion, the record shows that the agency's determination was based, not on a mechanical application of a staffing requirement, but on a comparison of Cobra's proposed staffing with the government estimate, the historical staffing level at the Dallas facility, and actual staffing levels at other FDA buildings of similar size (four to seven employees). The agency estimated that 7,700 total hours of labor by four personnel (one supervisor, one cleaner, one production laborer, and one supervisory laborer) would be necessary to meet its requirements. In its initial proposal, as indicated above, Cobra proposed two part-time janitors and an on-site supervisor/mechanic to perform the contract, but did not provide a breakdown of the hours it was proposing for each. Then, in its BAFO, Cobra proposed only 4,464 total hours by two personnel (one mechanic/licensed boiler operator and one on-site supervisor/mechanic), eliminating the initially proposed two part-time janitors. Cobra's BAFO stated that, in addition to performing all the mechanical, operational and maintenance services, the two proposed personnel would perform all the janitorial work, to be supplemented, if necessary, by personnel at other area facilities. This explanation, together with the total hours proposed, led the agency to believe that Cobra did not understand the importance of adequate staffing. (In contrast, the awardee proposed 6,433 hours by five personnel, which was more in line with the government's estimate.)

We find nothing improper in the agency's approach of comparing Cobra's proposed staffing to its estimate and other similar buildings--this did not constitute improper reliance

on an undisclosed requirement. Similarly, we find nothing unreasonable in the agency's conclusion that Cobra's proposal of substantially lower staffing than the agency deemed necessary to perform the work rendered the firm's proposal unacceptable. HospitalKlean, Inc., B-245158 et al., Dec. 17, 1991, 91-2 CPD ¶ 550.

Cobra argues that the evaluation of its staffing was erroneous to the extent that it was based on staffing requirements of other FDA buildings, since it believes the buildings used in the comparison are dissimilar to the Dallas building. Specifically, the protester maintains that the Dallas building is small, has only a few bathrooms and a large parking lot, and is located in the sunbelt, whereas the other FDA buildings are large and are located in the snowbelt. The protester concludes that the buildings used for comparison have greater cleaning needs, and that the FDA's reliance on personnel requirements for those buildings to determine the minimum personnel required to perform the services under the current solicitation thus was unreasonable.

We disagree. The record shows, contrary to the protester's assertion, that in fact most of the other FDA buildings are smaller than the Dallas facility (based on square footage), and that the number of mechanical maintenance and custodial personnel working in each of these buildings nevertheless is higher (from four to seven employees) than the number of personnel proposed by Cobra. Cobra has submitted no information supporting its claims as to the number of bathrooms and the size of the parking lots at the other buildings, and its assertion that the cleaning requirements are different for the Dallas building than for the other FDA buildings on the basis that the latter buildings are located in the snowbelt is simply incorrect; at least two of the buildings used in the comparison clearly are not located in the snowbelt (Los Angeles and Atlanta). We conclude that FDA reasonably relied in part on historical staffing levels at the other FDA buildings in finding that Cobra's proposed staffing level was inadequate.¹

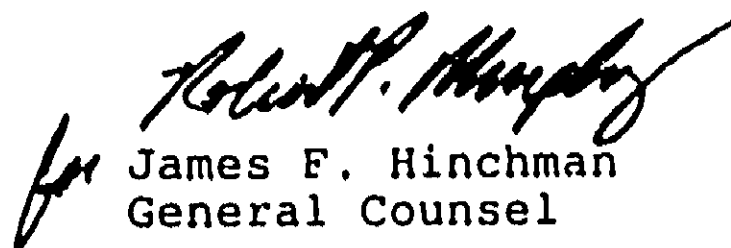
Finally, Cobra maintains that discussions were inadequate because the agency did not inform Cobra that its proposal

¹The protester asserts alternatively that the FDA placed significantly more emphasis on the staffing policy criterion than was indicated in the RFP. This argument is without merit. Notwithstanding that the staffing criterion was assigned only 25 of the available 100 technical points, the evaluation scheme did not preclude the agency from rejecting a proposal found to be inadequately staffed to perform the work.

failed to meet the alleged de facto minimum staffing requirement.

As already discussed, the agency did not apply a de facto minimum staffing requirement. To the extent the protester is arguing that the agency simply did not inform Cobra of the staffing deficiency in its proposal, we find otherwise. The agency held extensive oral discussions during which it advised Cobra on three occasions to ensure that it had proposed adequate staffing to support the requirements under the RFP and to explain in detail how this would be accomplished. Agencies satisfy the requirement for meaningful discussions by advising offerors in the competitive range of deficiencies in their proposals and affording them the opportunity to correct the deficiencies by submitting revised proposals. Federal Acquisition Regulation § 15.610(c); Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407. The agency brought its concerns regarding adequate staffing to Cobra's attention and provided Cobra an opportunity to submit a revised proposal responding to those concerns. Cobra did respond but, the agency found, did so inadequately. We conclude that the FDA met the standard for conducting meaningful discussions.

The protest is denied.


for James F. Hinchman
General Counsel